

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

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COMMISSIONER

February 14, 2005

James M. Avery
Brown, Rudnick, Berlack, Israels, LLP
One Financial Center
Boston, Massachusetts 02111

Re: The Berkshire Gas Company and The University of Massachusetts, Amherst
(04-GC-31).


Dear Mr. Avery:

On December 23, 2004, The Berkshire Gas Company ("Company") filed with the Department of Telecommunications and Energy ("Department") a request for approval of a negotiated 20-year Firm Transportation Agreement ("Agreement") between itself and the University of Massachusetts at Amherst.

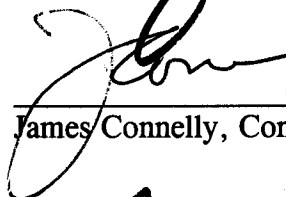
Regarding the proposed Agreement, the Department notes that it recently approved agreements which were similar in scope and content. The Department notes that the price agreed upon for the Agreement exceeds the Company's marginal cost for providing this service. Therefore, the Department approves the proposed Agreement. However, in the event that the Company's marginal cost for providing transportation under the Agreement exceeds the negotiated rate for the 20-year transportation service, the Company may not provide service under the Agreement without prior approval from the Department.

The Department finds that the pricing terms of the Agreement are competitively sensitive, and therefore grants the Company's request for protection from public disclosure, pursuant to G.L. c. 25 § 5(d). Further, the Department emphasizes that no costs of serving the Customer under this Agreement are to be assigned to captive customers.

Very truly yours,



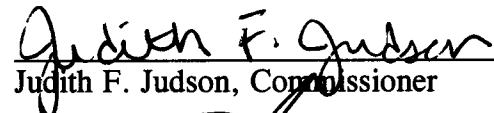
Paul G. Afoa, Chairman



James Connelly, Commissioner



W. Robert Keating, Commissioner



Judith F. Judson, Commissioner



Brian Paul Golden, Commissioner

cc: Mary L. Cottrell, Secretary
Joseph Rogers, Esq., Assistant Attorney General

TRANSPORTATION AGREEMENT BETWEEN THE BERKSHIRE GAS COMPANY AND THE UNIVERSITY OF MASSACHUSETTS - AMHERST

This Agreement ("Agreement"), entered into this 30th day of June, 2004, by and between The Berkshire Gas Company, a Massachusetts gas company ("Berkshire" or the "Company") and The University of Massachusetts - Amherst, an institution of higher learning within the Commonwealth of Massachusetts ("Customer" or "UMass").

WHEREAS, UMass desires to purchase and Berkshire desires to provide to UMass specialized natural gas transportation service on a firm basis 365 days per year to UMass' Amherst, Massachusetts campus (the "Campus"), including a new central heating plant being developed at the Campus, for the term described herein; and,

WHEREAS, the parties recognize that Berkshire shall need to arrange for the design, development and installation of certain natural gas distribution facilities in order to provide the specialized service described herein.

NOW THEREFORE, in consideration of the mutual obligations set forth herein, Berkshire and UMass agree as follows:

ARTICLE I. DEFINITIONS

- 1.1 The term "UMass' Supplier" means the entity that sells and/or transports natural gas to the Point of Receipt for UMass' account.
- 1.2 The term "Customer Meters" means the devices owned by Berkshire used to record the flow of natural gas at the Campus, for UMass' account.
- 1.3 The term "Day" means a twenty-four hour period coincident with the "Gas Day" as defined in the Tennessee Gas Pipeline Company ("Tennessee") tariff on file with the Federal Energy Regulatory Commission ("FERC"), as the same may be amended from time to time.
- 1.4 The term "Heating Degree Day" or "HDD" means the departure of the daily mean temperature from sixty-five degrees Fahrenheit, as measured by the Company. If the daily mean temperature is greater than sixty-five degrees Fahrenheit, then HDD equals zero.
- 1.5 The term "Effective Date" means the first Day of the Month following MDTE approval of this Agreement.
- 1.6 The term "MDTE" means the Massachusetts Department of Telecommunications and Energy.
- 1.7 The term "Month" means the period coincident with the term "Month" as defined in the Tennessee tariff on file with the FERC, as the same may be amended from time to time.
- 1.8 The term "Operating Procedures" means the supplemental procedures established pursuant to Section 18.1.

- 1.9 The term "Point of Delivery" means the outlet side of a Customer Meter.
- 1.10 The term "Point of Receipt" means the outlet side of the Tennessee Gas Pipeline Company Greenfield Meter, No. 020292, or such other point as the parties may from time to time agree upon in writing.
- 1.11 The term "Necessary Facilities" means the gas distribution facilities described in Attachment A that are necessary for Berkshire to be able to deliver the Period B Volumes.

ARTICLE II. TRANSPORTATION SERVICE

- 2.1 On any Day, Berkshire agrees to receive for the account of UMass for transportation the amount of natural gas described below as nominated by UMass or UMass' Supplier pursuant to this Agreement, and the limitations described herein, and the Company's Distribution Service Terms and Conditions currently M.D.T.E. No. 331 ("Terms and Conditions"), and tendered by UMass at the Point of Receipt. This Agreement shall provide the terms for UMass' long-term firm and specialized transportation service for natural gas deliveries at its planned new central heating plant (the "Plant") as well as the continuation of the transportation services currently provided by Berkshire. UMass' natural gas transportation service requirements shall be as follows:
- (a) Period A - for the period commencing on the first day of the first month following the execution of this Agreement through August 31, 2006 ("Period A"), Berkshire shall (i) continue to provide transportation service, at current pressure levels, for a base load quantity of up to 1,200 dekatherms ("Dth") per day in the months of April through October and a base load quantity of up to 1,400 Dth per Day in the months of November through March (the "Period A Volumes") at the Point of Delivery and (ii) make reasonable efforts, consistent with Berkshire's utility service obligation, to reserve capacity to provide gas transportation service for volumes necessary for UMass' testing of the Plant. The delivery of the Period A Volumes may be interrupted by Berkshire consistent with the provisions of Berkshire's Loan Management Service tariff, currently M.D.T.E No. 323.
- (b) Period B - subject to receipt of requisite regulatory approval of the construction and operation of the Necessary Facilities as defined in Attachment A, for the twenty-year period commencing September 1, 2006 ("Period B"), Berkshire shall provide exclusive transportation service from the Point of Receipt or such other delivery point on the Tennessee system as currently configured for a base load quantity at the Point of Delivery of up to: (i) 5,160 Dth per Day in the months of October through May; and (ii) 4,200 Dth per Day in the months of June through September (the "Period B Volumes"). As described in Section 6.1(b), UMass acknowledges that Berkshire may need to dispatch liquefied natural gas ("LNG") in order to deliver the Period B Volumes depending upon the HDD's anticipated on a given Day (consistent with the process described in Section 6.1). Berkshire shall retain the right to curtail delivery of all or part of the Period B Volumes for up to 360 hours per year during its peak demand period (November 15 through February 15) for individual periods of at least one hour upon 24-hours advance notice to UMass. In no event shall Berkshire be required to receive from Tennessee at the Point of Receipt for delivery to UMass an amount in excess of

the Period B Volumes as adjusted for the Company Gas Allowance determined in accordance with the Company's Terms and Conditions.

- 2.2 Berkshire understands that UMass may construct and install compression facilities after the Customer Meters ("UMass Compressor") and that such compression facilities may be designed to upgrade the pressure for the Period B Volumes so as to provide for an output pressure of 400 psig to operate the Plant. Berkshire will install a header after the meter but prior to the UMass Compressor pursuant to a design accepted by UMass so that gas is available at one outlet of such header at approximately 100 psig for delivery to the Plant and at approximately 50 psig at a second outlet of the header for delivery to other UMass equipment. The header is to be installed on a skid designed for Berkshire's metering equipment. Berkshire shall maintain such facilities to the downstream side of the proposed regulators that are to be attached to the header. UMass acknowledges that the Necessary Facilities shall include such metering and regulating equipment to ensure that the operation of the UMass Compressor remains consistent with the Period B delivery requirements and does not otherwise interfere with Berkshire's utility obligations.
- 2.3 Berkshire agrees to transport and deliver to or for the account of UMass at the Point of Delivery and UMass agrees to accept delivery of the quantity of natural gas received by Berkshire for UMass' account on any Day as described in Section 2.1.
- 2.4 The Company's Terms and Conditions, as may be amended or superseded from time to time, are incorporated by reference and made part of this Agreement. In the event of any inconsistency or conflict between the terms of any of the Company's Terms and Conditions and this Agreement, the terms of this Agreement shall govern. In the event of any inconsistency or conflict between any Operating Procedures developed pursuant to the process described in Section 18.1 and the Terms and Conditions, the terms of the Terms and Conditions shall control.

ARTICLE III. QUALITY

- 3.1 All natural gas tendered for transportation to Berkshire for the account of UMass at the Point of Receipt will conform to the quality specifications set forth in the Company's Terms and Conditions. Berkshire may refuse to accept the delivery of any natural gas for transportation that does not meet such quality provisions.

ARTICLE IV. SYSTEM IMPROVEMENTS

- 4.1 Subject to all applicable federal, state and local laws, regulations, codes and permits, Berkshire will provide all mains, services and metering equipment necessary to provide the transportation service described herein to UMass. However, UMass shall be responsible for installation of a dedicated phone line, an electrical outlet with a capacity of 120 volts and payment of all applicable electricity and phone charges. Berkshire shall apply all reasonable efforts to the design, permitting and construction of the Necessary Facilities which are required for Berkshire to provide transportation service for the Period B Volumes. UMass hereby grants Berkshire a license for the construction and operation of the necessary distribution facilities to be located on UMass property and described in Attachment A and agrees to provide such further evidence of such license as the

Company may reasonably request. If, during the term of this Agreement, UMass installs additional natural gas fired equipment other than (i) equipment which currently exists at the Campus, (ii) equipment that is related to plans disclosed to Berkshire with respect to McGuirk Stadium, Furcolo, and greenhouse conversions, or (iii) the Plant, and system improvements are required by Berkshire to meet UMass' additional natural gas requirements, then UMass shall be responsible for the cost of such system improvements unless the parties agree otherwise in writing. Attachment C hereto describes the existing meters maintained by Berkshire at the Campus serving existing UMass natural gas requirements.

- 4.2 Except for any negligence on the part of Berkshire, UMass shall not make any claim or institute any litigation or regulatory proceedings relating to the Company and its parent, subsidiaries, officers, directors, shareholders, employees, agents, successors and assigns with respect to any and all claims, obligations, demands, losses, liabilities and causes of action of whatever nature whether known or unknown, suspected or unsuspected, fixed or contingent arising out of or relating to the condition at the Campus or the presence of hazardous materials on, in, under, at, or from the portion of the Necessary Facilities located on UMass property. UMass agrees that this provision survives the expiration or termination of this Contract and extends to the respective successors or assigns of the Company and UMass.
- 4.3 As used herein, the term "hazardous materials" shall mean, without limitation, any substance deemed to be a "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC § 9601 et seq., as amended, and the regulations promulgated thereunder, 40 CFR Part 300 et seq.; any substance deemed to be "hazardous waste" within the meaning of the Resource Conservation and Recovery Act (RCRA), 42 USC § 6901 et seq. and regulations promulgated thereunder, 40 CFR Part 261; any substance deemed to be "oil" and/or a "hazardous material" within the meaning of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws c. 21 E, as amended, and regulations promulgated thereunder, 310 CMR 40.00 et seq. (collectively, "Chapter 21 E"); any substance deemed to be a "hazardous waste" within the meaning of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws c. 21 C, and regulations promulgated thereunder, 310 CMR 30.00 et seq.

ARTICLE V. TERM OF AGREEMENT - TERMINATION

- 5.1 This Agreement will be effective as of the Effective Date and remain in effect for the duration of Period A and Period B (the "Initial Term"), provided, however, that the obligations of UMass and Berkshire shall be conditioned upon Berkshire obtaining all necessary approvals of its Board of Directors with 45 days from the date hereof. If such approval is not obtained this Agreement shall terminate and all obligations of the parties shall be null and void.
- 5.2 This Agreement may be terminated by Berkshire if UMass is in default in the performance of any term, condition, covenant or agreement hereof including, without limitation, the failure to pay part or all of any bill hereunder, and such default continues unremedied for 30 days after written notice shall have been given to UMass; provided that termination will not be effective if, prior to the date of termination, UMass cures the

violation, or either pays such outstanding bill or notifies Berkshire in accordance with Section 7.3 below that it disputes a portion of the bill and makes payment on the undisputed portion of the bill.

5.3 In the event that this Agreement is terminated before the expiration of the Initial Term, including, without limitation, pursuant to Section 5.2 or Section 14.1 hereof, UMass will promptly pay Berkshire a termination charge (such payment shall be in addition to any other remedy available to Berkshire as a result of such termination), determined as follows:

- (a) If the Agreement is terminated during Period A prior to the completion of the Necessary Facilities, then the termination charge shall be (i) Berkshire's "out of pocket" expenses incurred in connection with the design, permitting and construction of the Necessary Facilities, including, without limitation, charges incurred from consultants, surveyors, engineers, vendors, attorneys and other service providers, plus (ii) Berkshire's costs for materials, contractors and other service providers associated with the termination of the development of the Necessary Facilities, the costs of disposing of materials and equipment procured in connection with the development of the Necessary Facilities and the costs associated with any clean-up or restoration activities, less (iii) an amount determined by the product of (A) the number of months in Period A between the Effective Date and the termination event, and (B) \$
- (b) If the Agreement is terminated after completion of Necessary Facilities during Period A or at any time during Period B, then the termination charge shall equal the discounted net present value (assuming the Cost of Capital, as defined below, of an amount determined by the product of the number of Months remaining in the Initial Term times the then effective Period B Base Charge set forth in Section 6.1(b)(i)). The "Cost of Capital" shall be the overall rate of return reflected in Berkshire's then current rates as set by the MDTE.

ARTICLE VI. CHARGES

6.1 Charges for Customer's transportation service for Period A and Period B shall be:

- (a) Period A. Charges for transportation service during Period A shall be (i) as established pursuant to Berkshire's relevant tariff, at present the T-54 rate, M.D.T.E. No. 342, including any amounts due pursuant to the mandatory local distribution adjustment charge ("LDAC"), or similar charge subsequently established from time-to-time by the MDTE and described in Berkshire's current Rate Schedule M.D.T.E. No. 330, plus (ii) \$ as compensation for Berkshire reserving capacity to deliver the Period B Volumes.
- (b) Period B. Charges for transportation service during Period B shall be based upon three components:
 - (i) Base Charge. The negotiated monthly Base Charge ("Base Charge") shall be \$ during the initial year of Period B (i.e., September 1, 2006 through August 31, 2007). On each May 15 commencing in 2007 and continuing throughout Period B, Berkshire shall notify UMass of any

change to the Base Charge for effect on September 1 of such year by adjusting the then-current Period B Base Charge by an inflation index calculated as the greater of (a) the percentage change in the fourth quarter of the most recent year from the fourth quarter of the preceding year in the U.S. Department of Commerce Gross Domestic Product Price Index ("GDP-PI") or (b) zero. Notwithstanding the above, at no point in time during Period B will the total distribution base charge to UMass exceed the amount payable pursuant to the Company's then effective extra-large industrial customer tariff, currently rate schedule T-54, M.D.T.E. No. 342, exclusive of LDAC charges, except that any charge pursuant to Section 5.3 or Section 11.1 shall not be considered for purposes of calculating the UMass Period B Charge.

- (ii) Variable Charge. In order to reduce incremental construction costs associated with the construction of the Necessary Facilities and in order for Berkshire to commit to the Period B Base Charge, UMass understands and agrees that Berkshire may, from time to time, need to rely upon the dispatch of LNG to deliver UMass' minimum daily quality ("MDQ") described in Section 2.1(b). Accordingly, when Berkshire determines (i.e., based upon forecasted HDD's) consistent with its utility service obligation that LNG shall need to be dispatched by Berkshire to support the delivery of all or part of the Period B Volumes, Berkshire shall provide UMass as much notice as is reasonably practical consistent with the Company's Terms and Conditions and any Operating Procedures. UMass and Berkshire agree that Berkshire shall be required to dispatch the amounts of LNG reflected in Attachment B at the specified forecasted degree day levels if all or some of the UMass equipment is operational for the period ending five years from the date hereof. Berkshire shall notify UMass as to the need for LNG on a particular day and such notice shall include a fully-loaded commodity purchase price for any necessary LNG requirements and such other information as may be agreed upon in the Operating Procedures. UMass shall review Berkshire's posted price for LNG and then determine whether to take transportation service with the associated incremental variable charge or switch to an alternate fuel. UMass shall promptly notify Berkshire of its election to take or reject transportation service resulting, in part, from Berkshire's dispatch of LNG. The failure of UMass to respond to Berkshire's notice that LNG is required to deliver the MDQ shall be interpreted to mean that UMass has declined service for the Period B Volumes on such Day. (Any election by UMass not to take transportation service for the full Period B Volumes during periods when Berkshire has indicated that LNG is necessary shall be independent of and shall not affect Berkshire's right to curtail delivery of all or part of the Period B Volumes described in Section 2.1(b) above.) Berkshire and UMass acknowledge and agree that the actual LNG requirements necessary to transport the Period B Volumes could change over time. Not less than sixty (60) days prior to the fifth, tenth, fifteenth and twentieth anniversary of the execution of this Agreement, Berkshire shall review its distribution system and delivery requirements and shall deliver to UMass an updated summary of the information contained in Attachment B to cover the five-year period commencing on such anniversary or, in the case of the last such

adjustment, the remainder of Period B. The revised and updated version of Attachment B shall reflect Berkshire's good faith estimate of the minimum LNG requirements to provide transportation service for the Period B Volumes consistent with Berkshire's overall utility obligations. Notwithstanding such obligations, Berkshire shall not revise the level of forecasted HDD's that trigger the need for dispatching LNG under a particular scenario by more than two (2) HDD's for each scenario in any revised form of Attachment B delivered to UMass pursuant to this Section.

- (iii) LDAC. UMass shall pay Berkshire the mandatory LDAC, or similar charge subsequently established from time-to-time by the MDTE and described in Berkshire's current Rate Schedule M.D.T.E. 330.

- 6.2 If UMass elects to accept the dispatch of LNG when necessary for Berkshire to deliver the Period B Volumes, Berkshire shall have the right of first refusal to purchase from UMass any of the portion of the Period B Volumes that UMass would otherwise deliver to the Plant but that is to be displaced by LNG. UMass' notice of election to take service based upon LNG dispatch pursuant to Section 6.1(b)(ii) shall include a statement of such volumes and the market price for such supply. Berkshire shall promptly notify UMass of its election to purchase such volumes. The procedures for such notice, acceptance and pricing of supply subject to this right of first refusal shall be governed by the Operating Procedures.
- 6.3 If UMass determines that, as a result of the construction and operation of the Plant, it is appropriate for UMass to secure added transportation capacity from Tennessee on the so-called Northampton lateral, UMass shall promptly notify the Company. The Company shall undertake reasonable efforts to arrange with Tennessee for such upgrade, including assuming the role of shipper of record. The Company's added costs from Tennessee and all legal, administrative and other costs incurred by the Company in connection with such upgrade, including, without limitation, necessary upgrades to the Company's distribution system, shall be charged to and paid by UMass through such charge or charges that the Company shall establish. Berkshire and UMass agree that the costs associated with any upgrades to the Company's distribution system shall be included in an adjustment to the Period B Base Charge.

ARTICLE VII. BILLING AND PAYMENT

- 7.1 Billing procedures, payment terms and any applicable remedies for late payment, including, without limitation, penalties, shall be as set forth in the Company's Terms and Conditions and 220 CMR 26.00, as both may from time to time be amended.
- 7.2 If UMass in good faith disputes any portion of a bill, it may withhold the disputed amount, but will pay when due such amounts as it acknowledges to be correct. If UMass withholds payment of a disputed amount, it will on or before the date of the disputed invoice provide to Berkshire, in writing, notice of the amount in dispute and an explanation of why UMass does not believe such amounts are payable. Such notice will include any available supporting documentation, including transporting pipeline allocation or meter statements to verify volumes received. If such documentation is not available by the due date, UMass will pay all charges as they appear on the bill. When it

is ultimately determined how much of the disputed amount is owed by UMass to Berkshire, that amount, plus interest as determined by the procedures in Section 7.1 above, will be payable immediately upon such determination. Any overpayment will be calculated in this same manner and repaid or credited to UMass. The parties will use all reasonable efforts to resolve the issues raised by billing disputes.

ARTICLE VIII. ADDRESSES

- 8.1 Any notice, request, demand, statement, or bill provided for in this Agreement, or any notice which any party may desire to give to the other, shall be in writing, and shall be considered duly delivered when mailed by registered, certified, or regular mail to the post office address of the parties set forth below:

Berkshire: The Berkshire Gas Company
 115 Cheshire Road
 Pittsfield, Massachusetts 01201
 Attn: President, Chief Operating Officer and Treasurer
 Phone: (413) 445-0244
 Fax: (413) 443-0546

UMass: Director, Physical Plant
 University of Massachusetts
 360 Campus Center Way
 Amherst, MA 01003-9248
 Attn: Patrick Daly
 Phone: 413-545-0601
 Fax: 413-545-1450

or such other address as either party may designate by written notice.

- 8.2 All notices with respect to operational procedures, nominations, the procedures described in Section 6.1 and Section 6.2 and similar matters shall be governed by the Operating Procedures.

ARTICLE IX. ACCESS TO PREMISES

- 9.1 UMass will provide Berkshire and any contractors with such reasonable rights of way and right of entry to UMass' facilities and suitable space for the Necessary Facilities as may be required by Berkshire and any contractor in connection with performance pursuant to this Agreement, provided, however, that Berkshire and such contractor will not unreasonably interfere with UMass' operations. Such right of way and right of entry includes, but is not limited to, access for any use, installation, maintenance and periodic inspection of the natural gas facilities of Berkshire or UMass, including piping and metering equipment. In addition, UMass will furnish and maintain, at no cost to Berkshire, the necessary telephone lines, space, housing, fencing, foundations for the meters, regulators, and other natural gas equipment owned by Berkshire which are installed at the plant whether such equipment is furnished by UMass or by Berkshire. Such telephone lines, and space will be in conformity with public laws and regulations, and be subject to the Company's reasonable specifications and approval.

ARTICLE X.
INCIDENTAL OR CONSEQUENTIAL DAMAGES

- 10.1 Neither Berkshire nor UMass will be liable to the other or any party claiming through the other for incidental or consequential damages, including, without limitation, any claims for delays in completing the Necessary Facilities or termination of Customer's service.

ARTICLE XI.
ADJUSTMENTS

- 11.1 In the event that Berkshire is required to relocate any of the Necessary Facilities located on the property of UMass or located elsewhere due to the requirements of UMass prior to the expiration of the Initial Term, then the Period B Base Charge shall be adjusted to provide for Berkshire's recovery of the amount of such relocation costs that are not reimbursed by the relevant municipal or governmental authority. Specifically, the then current Base Charge will be adjusted for the remainder of the Initial Term in order to provide for the recovery of such additional costs (with carrying charges assuming the Cost of Capital).

ARTICLE XII.
WAIVER

- 12.1 No waiver by either party of any default or breach of any of the obligations contained in this Agreement or under Berkshire's tariffs to be performed by the other party will be construed as a waiver of any succeeding default or breach of the same or any other obligation or condition.

ARTICLE XIII.
ASSIGNMENT

- 13.1 Berkshire shall have the right to assign its rights and obligations under this Agreement to any successor to Berkshire's public utility business. UMass shall not assign this Agreement without prior written consent of Berkshire, which consent shall not be unreasonably withheld. This Agreement will be binding upon and will inure to the benefit of the respective successors and assigns of the parties hereto.

ARTICLE XIV.
PUBLIC REGULATION

- 14.1 The Company is a public utility subject to regulation by the MDTE. Compliance by the Company with any order or rule of the MDTE or any other regulatory or legislative authority with jurisdiction shall not constitute a breach hereof. UMass is an agency of the Commonwealth and its compliance with any regulation or legislative authority with jurisdiction over UMass shall not constitute a breach hereof. In the event of the issuance of any order or rule of the MDTE or any other regulatory or legislative authority with jurisdiction that materially and adversely affects the terms and conditions of this Agreement, either party may give written notice to the other requiring renegotiation of the affected terms and conditions of the Agreement and the parties shall negotiate in good faith an amendment to this Agreement that remedies such material and adverse affect and which is in compliance with the order or rule. Should the parties fail to agree on such an amendment to this Agreement within 60 Days of the issuance of the order or

rule, the affected party may terminate this Agreement upon providing written notice to the other.

ARTICLE XV. FORCE MAJEURE

- 15.1 Neither Berkshire nor UMass will be liable to the other for any act, omission or circumstance occasioned by or in consequence of any event constituting Force Majeure, and unless it is otherwise expressly provided herein, the obligations of Berkshire and UMass then existing hereunder will be excused during the period thereof to the extent affected by such event of Force Majeure, provided that reasonable diligence is exercised to overcome such event. As used herein, "Force Majeure" will mean compliance by either party with an order, regulation, law, code or operating standard imposed by a governmental authority, any act of God, strikes, lockouts, explosions, breakage or accident to machinery or pipeline (which explosion, breakage or accident is not the result of the Company's negligence or misconduct), declaration of Force Majeure by upstream transporting pipelines, or any other cause, whether of the kind enumerated herein or otherwise, not within the control of the party claiming Force Majeure and which by the exercise of reasonable diligence such party is unable to prevent or overcome. Notwithstanding the foregoing, UMass' obligation to make any payments required under this Agreement will in no case be excused by an event of Force Majeure. Nor will a failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees be considered to be a matter within the control of the party claiming excuse. The party claiming Force Majeure will, on request, promptly provide the other party with a written explanation thereof, and of the remedy being undertaken.

ARTICLE XVI. INTERIM PROCEDURES

- 16.1 UMass acknowledges that there may be factors beyond Berkshire's control, including, without limitation securing regulatory approval for the construction and operation of the Necessary Facilities and securing the approval of this Agreement. Berkshire shall not be responsible or liable for delays or extensions to the completion of the Necessary Facilities beyond the commencement date for Period B due to such factors. In the event the completion of the Facilities is delayed, Berkshire shall, subject to its public service obligations, seek to develop interim measures to provide transportation service for all or part of the Period B Volumes. Berkshire and UMass will work cooperatively in such efforts and will consider a variety of measures to serve UMass' requirements for the interim operation or testing of the Plant, such as providing interruptible service and additional load management rights.

ARTICLE XVII. ENTIRE AGREEMENT

- 17.1 This Agreement supersedes, terminates, and merges all prior, collateral, and contemporaneous agreements, written or oral, between the parties relating to the subject matter hereof.

ARTICLE XVIII.
OPERATING PROCEDURES

- 18.1 Berkshire and UMass shall periodically execute one or more written agreements describing supplemental operating procedures relating to the service provided hereunder, including, without limitation, procedures relating to LNG notice, nomination and pricing pursuant to Section 6.1(b)(ii), the exercise of any rights of first refusal, technologies to be applied for notice, nomination and billing and the determination of the units for thresholds for LNG dispatch reflected in Attachment B.

ARTICLE XIX.
REGULATORY AND OTHER APPROVALS

- 19.1 UMass shall cooperate with Berkshire in connection with Berkshire's securing necessary regulatory approval for the construction and operation of the Necessary Facilities and this Agreement and any related agreements. UMass shall also support Berkshire's petition or petitions before the MDTE with respect to this Agreement and shall support the Terms and Conditions of this Agreement in any subsequent rate or regulatory proceeding at the MDTE. UMass shall also support Berkshire's petition to the Energy Facilities Siting Board and any other permitting agencies with respect to the construction and operation of the Facilities.

ARTICLE XX.
GENERAL

- 20.1 Section headings are for convenience and reference only, and may not be construed to explain, amplify, or modify the provisions of this Agreement.
- 20.2 No promises, agreements, representations, or warranties will be binding upon Berkshire or UMass unless the same is evidenced by a signed writing and made a part of this Agreement.
- 20.3 The interpretation and performance of this Agreement will be in accordance with the laws of the Commonwealth of Massachusetts.
- 20.4 Attachments A through C hereto are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers:

THE BERKSHIRE GAS COMPANY

By: Karen L. Zink
Name: Karen L. Zink
Title: President, Chief Operating Officer and
Treasurer

THE UNIVERSITY OF MASSACHUSETTS -
AMHERST

By: John V. Lombardi
Name: John V. Lombardi
Title: Chancellor, University of Massachusetts at
Amherst